

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Request for Review of the)	CC Docket No. 02-6
Decision of the)	
Universal Service Administrative Company)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Schools and Libraries Universal Service)	Charlotte County School District
Support Mechanism)	Funding Years 2005, 2006, 2007, and 2008
)	Form 471 Application Nos. 463795, 498259,
)	560949, 606829
)	FRNs 1301495, 1400257, 1547566, 1672288

**CHARLOTTE COUNTY SCHOOL DISTRICT MOTION FOR EXPEDITED
TREATMENT OF REQUESTS FOR REVIEW
OF DECISIONS BY THE UNIVERSAL SERVICE ADMINISTRATIVE COMPANY**

Richard Rubin
Matthew Lewis
Winston & Strawn LLP
1700 K Street NW
Washington, DC 20006
(202) 282-5652
Counsel for Charlotte County School District

September 27, 2011

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Charlotte County School District¹ (the “District”), by its attorneys, moves the Federal Communications Commission (“FCC”) to expedite action on its November 1, 2010 and March 31, 2011, Requests for Review. The District is seeking review of two decisions by the Schools & Libraries Division (the “SLD”) of the Universal Service Administrative Company (the “USAC”) that have resulted in the District not receiving approximately \$733,000 in E-Rate funds over the past three fiscal years and SLD seeking rescission of an additional \$611,000 in funds distributed during fiscal years 2005 – 2008. Expedited review by the FCC is warranted because the actual and potential loss of the E-Rate funds caused by SLD’s decisions are having a

¹ The Charlotte County School District consists of over 16,000 students and 2,000 teachers located on 19 K-12 campuses in a rural area of southwest Florida. Its mission is to “provide an innovative educational environment that allows and inspires success for everyone.” “Charlotte County Public Schools Fact Sheet,” <http://www.yourcharlotteschools.net/documents/media/2010QuickFacts.pdf>.

devastating impact on student learning in the District, which is broadly inconsistent with the very purpose of the E-rate program. The Charlotte County School District is experiencing extreme budget difficulties and the lack of E-Rate funding since fiscal year 2008 has forced the District to cut numerous staff and teaching positions. Such cuts have resulted in higher student to teacher ratios as well as certain programs being reduced or eliminated altogether – all of which adversely impact student learning throughout the District. Simply put, prompt and favorable resolution of the District’s Requests for Review is necessary so that the District may restore the positions and programs funded by the E-Rate program to their previous levels and continue to provide high-level educational opportunities for its students.

A. SECTION 54.724 OF THE FCC’S RULES.

The November 1, 2010 Request for Review has been pending before the FCC for ten (10) months. The March 31, 2011 Request For Review has been pending before the FCC for (5) months.

Section 54.724 of the FCC’s rules states:

- (a) The Wireline Competition Bureau shall, within ninety (90) days, take action in response to a request for review of an Administrator decision that is properly before it. The Wireline Competition Bureau may extend the time period for taking action on a request for review of an Administrator decision for a period of up to ninety days. The Commission may also at any time, extend the time period for taking action of a request for review of an Administrator decision pending before the Wireline Competition Bureau.
- (b) The Commission shall issue a written decision in response to a request for review of an Administrator decision that involves novel questions of fact, law, or policy within ninety (90) days. The Commission may extend the time period for taking action on the request for review of an Administrator decision. The Wireline Competition Bureau also may extend action on a request for review of an Administrator decision for a period of up to ninety days.²

² 47 C.F.R. §54.724.

The District is not aware of any action by either the Wireline Competition Bureau or the FCC to extend the 90-day period provided in Section 54.724 with regard to the District's Requests for Review. Thus, it appears that the failure of the Bureau or the FCC to take action on the referenced Requests for Review violates Section 54.724 of the FCC's rules.³

B. THE FCC'S DELAYED ACTION ON THE REQUESTS FOR REVIEW HAS ALREADY IMPOSED AN UNREASONABLE ECONOMIC BURDEN ON THE DISTRICT AND FURTHER BURDEN MUST BE PREVENTED.

1. Background of Requests for Review

The District has requested review of two independent but related SLD decisions involving the District's funding year ("FY") 2005 - 2008 requests to pay Trillion Partners, Inc. for Wide Area Network and Internet services provided to the District, its schools and its students.

November 1, 2010 Request for Review: On November 1, 2010, the District filed its Request for Review of a Funding Commitment Decision Letter ("FCDL") issued by the SLD on September 15, 2010 that denied the District's FY2008 Funding Request Number ("FRN")

³ Commentators have recently concluded that while the FCC historically adhered to the initial 90-day requirement in Section 54.724 by instituting formal time extensions, the Commission has now largely departed from that practice without explanation:

Despite the 180 day deadline for deciding appeals, many have languished at the FCC for years with no action.

The process by which the FCC has avoided the 180-day decision deadline is in itself an interesting commentary on the administrative laxness of the program. Until recently, as required by 47 C.F.R. § 54.724, the Wireline Competition Bureau has carefully issued procedural orders extending the ninety-day period for decision in sixty to thirty day increments up to the ultimate 180-day deadline, but then simply ignores the more fundamental 180 decisional requirement. [fn. omitted]. Even the issuance of procedural extension orders of the ninety-day requirement seems to have fallen into disuse recently.

Ramsey Woodworth, *Camp Runamuck: The FCC's Troubled E-Rate Program*, 14 CommLaw Conspectus 335, 347 (2006); see also Jonathan Marashlian, *The Mis-Administration and Misadventures of the Universal Service Fund*, 19 CommLaw Conspectus 343, 391-92 (2011) ("some of the petitions for review now pending before the Commission go back as long as five years and relate to filing years back to 2003. Considering that FCC rules provide a baseline assumption that the Commission will issue a written decision on appeals within 90 days, five years is an inordinately long time, and the FCC has not indicated that it plans to act on individual appeals anytime soon.").

1672288 as identified in Form 471 Application Number 606829. Prior to its September 15th FCDL, the SLD had informed the District that it intended to deny funding requests submitted by the District. Specifically, in a letter dated June 4, 2010, SLD indicated that it intended to deny funding requests made by the District for FYs 2008, 2009 and 2010, which were filed on February 1, 2008, February 5, 2009, and February 10, 2010 respectively. The SLD claimed that the District's five-year, \$2,550,000 contract with Trillion Partners, which the parties entered in January 2008 following a bidding process that closed in 2007, was tainted and therefore not the result of a competitive bidding process due to a District official receiving approximately \$500 in travel-related expenses to attend an industry-wide conference as a speaker in 2007 and in 2008.

On June 23, 2010, the District responded and requested SLD to reconsider its proposed denials. Among other things, the District pointed out that: (a) at the time Trillion bid on the 2008 contract, the District was already a customer of Trillion pursuant to a five-year contract entered in 2003; (b) Trillion was the only bidder for the 2008 contract; (c) the competitive bidding process for the 2008 contract did not begin until three months after the 2007 conference attended by the District official and the contract had already been executed at the time of the 2008 conference; (d) the District official was invited to attend the conferences as a well-known and highly regarded speaker; (e) the *de minimis* amount of conference-related travel benefits received (approximately \$600 in 2007 and \$500 in 2008) could not and did not have any effect on the District's decision to enter a five-year contract exceeding well over two million dollars; and (f) the SLD has not cited any facts or evidence connecting the District official's attendance at the conferences to any perceived effect on the bidding process for the 2008 contract or that the contract was even discussed at the conferences.

Nearly three months later, SLD issued its September 15th FCDL denying the District's FY2008 FRN but approving the FY2009 and 2010 FRNs even though the SLD's reasoning in its June 4th letter was the same for all three funding year actions. The SLD made no effort to distinguish the denial of the FY2008 FRN from the grant of the FY2009 and 2010 FRNs. The District's November 1, 2010 Request for Review respectfully asks the FCC to reverse the September 15, 2010 FCDL as to FY2008 for many of the factual reasons articulated in the District's June 23rd letter and also because the SLD has failed to present any connection between the 2007 conference and the bidding process for the 2008 contract, but rather appears to be retroactively applying the new "gift" rules adopted by the FCC in May 2010 – approximately two to three years after the events underlying the SLD's September 15th FCDL.

March 31, 2011 Request for Review: On March 31, 2011, the District requested FCC review of three SLD Notification Adjustment Letters, each dated February 9, 2011 (the "COMADs"), that rescind funding commitments made to the District in response to FRN requests for FYs 2005, 2006 and 2007 and state that SLD will seek to recover the previously-dispersed funds. The FRNs in question concern requests to pay Trillion Partners for Wide Area Network and Internet services provided pursuant to a five-year contract entered in 2003 following a bidding process that ended in 2002. Nevertheless, more than eight years after the bidding process closed and more than five years after SLC had approved the District's FY2005 FRN request, the SLD's February 9, 2011 COMADs rescinded its FY2005 – 2007 funding commitments in full because it alleged the District received gifts, meals, etc that precluded a fair and open competitive bidding process. Yet, the COMADs do not identify any particular benefit(s), when such benefit was received or how they affected any bidding process. Also, the COMADs rescind funding commitments made pursuant to the District's 2003 contract with

Trillion and for which the competitive bidding process closed in 2002.⁴ Thus, even if the SLD was referring to the conference-related travel expenses received by the District official and described above, the SLD fails to explain how those purported benefits, received in 2007 and 2008, had any impact on a bidding process that closed approximately five years earlier. Because they are not supported by the facts nor the law, the District's March 31, 2011 Request for Review asks the Commission to reverse the COMADs to the extent they order rescission of the portions of the FCDLs for FY2005 - 2007 that granted the referenced FRN requests and seek recovery of committed funds already disbursed to, and spent by the District.

2. Economic Burden Caused by SLD Decisions and Delayed FCC Review

Expedited review of the SLD's decisions is warranted because the District has, and continues to experience a significant economic burden that prevents it from providing necessary educational opportunities for its students. Specifically, the SLD's decisions, combined with the FCC delayed review, has created the following situations:

i. The FY2005, 2006 and 2007 FRNs were approved for funding by the SLD as early as February 2006 and no later than July 2007, only for the SLD to rescind its own approval a minimum of three and one-half years later on February 9, 2011. Yet, in the three to five years before the rescission, the District, in good faith, proceeded to spend \$174,476 of the \$244,414 in funding approved for the FY2005 FRN, \$203,779 of the \$232,776 approved for the FY2006

⁴ The FRNs at issue in the COMADs are continuation funding requests for FY2005 - 2007 that were made pursuant to the District's 2003 Contract with Trillion. For FY2005, the District posted the relevant FCC Form 471 for FRN 1301495 on February 16, 2005 and on February 8, 2006, the USAC issued an FCDL with an approved funding commitment amount of \$244,414.80. On August 24, 2006, a disbursement of \$174,476.63 was authorized.

For FY2006, the District posted the relevant FCC Form 471 for FRN 1400257 on February 10, 2006 and on December 5, 2006, the USAC issued an FCDL with a funding commitment amount of \$232,776.00. On March 1, 2007, a disbursement of \$203,779.74 was authorized.

For FY2007, the District posted the relevant FCC Form 471 for FRN 1547566 on February 7, 2007 and on July 27, 2007, the USAC issued an FCDL with a funding commitment amount of \$232,776.00. On September 3, 2007, a disbursement of \$232,776.00 was authorized.

Therefore, disbursements for the funding years in question here had been authorized by USAC at least three (3) years and five (5) months before the February 9, 2011 COMADs.

FRN, and all \$232,776 of the \$232,776 approved for the FY2007 FRN. Thus, the District has spent more than \$611,032 in funding that is now subject to rescission and recovery as a result of SLD's belated decision and the District's Request for Review has been pending since March 31, 2011.

ii. The District's FY2008 FRN was denied by the SLD on September 15, 2010 and the District's Request for Review of SLD's denial has been pending since November 1, 2010 – more than ten months – which has resulted in the District spending \$217,346 that would be reimbursed if the FCC were to reverse the SLD's decision.

iii. Similarly, although the District's FY2009 and 2010 FRN requests were approved by the SLD on September 15, 2010, no funds have been disbursed even though the District has followed all appropriate procedures. Therefore, the District spent a total of \$516,340 in fiscal years 2009 and 2010 that the SLD agrees is covered by the E-Rate program but for which it has thus far failed to reimburse the District.

Combining (a) the \$217,346 that the District has spent as a result of the SLD's denial of its FY2008 FRN and would be re-couped if the FCC reverses the SLD's denial with (b) the \$516,340 the District has spent pursuant to its approved FY2009 and 2010 FRNs but for which the SLD has thus far withheld reimbursement, demonstrates that the SLD's still un-resolved decision has required the District to divert more than \$733,686 from its budget for expenditure on matters that should properly be funded under the E-Rate program at the expense of other services and programs provided by the District.

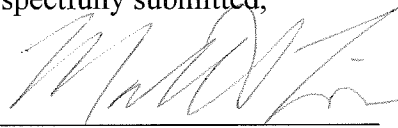
iv. As experienced at school districts throughout the country, Charlotte County is experiencing one of the most difficult budgetary sessions in decades and the District's financial situation continues to be even more adversely affected by the delayed resolution of its Requests

for Review of the SLD's decisions. The SLD's denial of the FY2008 funding request and refusal to provide the approved FY2009 and 2010 funds has created a budgetary deficiency of \$733,000 that has required the District to cut fourteen full-time positions (given the approximate cost of \$52,000 per position) during this current fiscal year. These cuts have involved instructional staff consisting of science technology and mathematics coordinators and library media specialists, which not only increase student to teacher ratios and diminish students' learning opportunities, but also cuts against the core of the SLD's E-Rate program's intended purpose – to provide schools and their students with access to telecommunications and information services. Accordingly, expedited review of the District's Requests for Review by the FCC is warranted so that the District may receive, and retain, the E-Rate funds to which it is entitled and continue to provide important educational opportunities for its schools and students without interruption or at the expense of its employees or programs.

C. CONCLUSION.

The Charlotte County School District has been and continues to be very proud of the good work that it has done in coordinating the delivery of advanced technology services to its K through 12 schools and students and doing so in compliance with USAC program rules and guidelines. Unfortunately, due to the significant funds that have been withheld as a result of the USAC's misguided FCDLs, the District has been forced to cut back on the funding of precisely those projects and staffing that are essential for its continued good work. Continued delay will be even more costly to the District, its schools, its teaches and its students beyond any possible intention of Congress or the FCC. For the reasons explained above, the District urges the FCC to grant the District's two pending Requests for Review by reversing the USAC denials and rescissions of the subject funding commitments and the related recovery of disbursed funds.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Richard Rubin', written over a horizontal line.

Richard Rubin

Matthew Lewis

Winston & Strawn, LLP

1700 K Street NW

Washington, DC 20006-3401

(202) 282-5000

Counsel for Charlotte County School District

September 27, 2011